

1 UNITED STATES DISTRICT COURT
2
3 NORTHERN DISTRICT OF CALIFORNIA
4
5 Before The Honorable Lisa J. Cisneros, Magistrate Judge
6
7

1 Transcribed by:

Echo Reporting, Inc.
Contracted Court Reporter/
Transcriber
echoreporting@yahoo.com

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Monday, January 8, 2024

12:32 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 ---oo--

4 THE CLERK: We are calling civil matter 23-MD-
5 03084, In Re: Uber Technologies, Inc.

6 Counsel, will you please state your appearances for the
7 record, beginning with Plaintiff's counsel.

8 MS. LUHANA (via Zoom): Good afternoon, Judge
9 Cisneros. Roop Luhana for the Plaintiffs.

10 MS. LONDON (via Zoom): Sarah London for the
11 Plaintiffs.

12 THE COURT: Ms. Abrams, you're on mute.

13 MS. ABRAMS (via Zoom): Yes. I apologize. Good
14 afternoon, your Honor. Rachel Abrams for the Plaintiffs.

15 MR. ATKINS (via Zoom): Robert Atkins with Kyle
16 Smith for Uber.

17 THE COURT: Okay. Thanks, everyone for -- for
18 being here today. I think that we can just jump right into
19 this. I've read all your papers and looked at the history
20 of the -- the dispute, including the filing that was -- came
21 in today concerning some disclosures that Defendants made on
22 January 4th.

23 I guess to start with, I wanted to find out exactly
24 what's still at issue. So, I saw the information about the
25 January 4th submissions, but what, if any, other information

1 has been produced since the protective order was issued on
2 December 28th?

3 MR. ATKINS: I think I can answer that. As set
4 forth in our papers, we produced a deposition from the JCCP,
5 a corporate rep regarding --

6 THE COURT: Okay. I -- I think the papers said
7 that there was a bunch of information that had been
8 disclosed in the JCCP, that that information Defendants were
9 willing to turn over once the protective order was issued,
10 but it wasn't clear to me. That -- that was filed before
11 the protective -- your -- your opposition was filed before
12 the protective order issued on December 28th. So -- so, you
13 did end up disclosing all of those -- those items?

14 MR. ATKINS: Yes. yes, your Honor.

15 THE COURT: Okay.

16 MS. LUHANA: Judge, Roop Luhana for the
17 Plaintiffs. Defendants produced documents just a couple of
18 hours ago that were produced in the JCCP. Plaintiffs don't
19 believe this is any substitute for the information we're
20 seeking in our motion, and I'm happy to get into that if
21 you'd like.

22 THE COURT: Okay. But I'll let Mr. Atkins just,
23 you know, walk me through again kind of exactly what was in
24 the JCCP information. I mean, it's in the papers, but it's
25 -- just --

1 MR. ATKINS: Yes. So --

2 THE COURT: -- to be crystal clear on that.

3 MR. ATKINS: -- several things. Your Honor, I
4 apologize for my voice. I also want to thank my colleagues
5 and your Honor for extending this hearing. I would advise
6 everybody not to get the flu that's going on. So, you'll
7 forgive me. I'm not -- my voice has not come back.

8 THE COURT: Yeah. The -- please take your time.

9 MR. ATKINS: Thank you very much.

10 So, we've turned over the following, which was set
11 forth in our papers, a corporate rep deposition that was
12 taken with regard to document and data preservation and
13 retention, sort of the equivalent of a 30(b) -- (b) (6).

14 We've also produced the policies themselves which we
15 had produced in the JCCP. There's a -- we produced a list.
16 As set forth in our papers -- pardon me -- the parties, the
17 Plaintiffs and the Defendant, have been in meet and confer
18 negotiations quite productively I might add, without any
19 rancor over the custodian. So, we've -- we've moved on from
20 preservation. There's no issues about preservation in the
21 JCCP. But we're now actually getting to custodians. The
22 Plaintiffs requested 143. We have identified those names,
23 and those names have now been provided to the MDL
24 Plaintiffs. Interestingly, just as a contrasting point, I
25 think your Honor saw and now you have a copy of the -- our

1 preservation net, if you will, has captured more than 15,000
2 email files, 15,000 jobs and positions. But in the JCCP,
3 the Plaintiffs started at 143 custodians. They're actually
4 now down to -- and we're sort of down to the short strokes.
5 They're down to I believe 55, which isn't to say they might
6 not enlarge that. But that gives you a sense of the scale
7 of the relevant custodians.

8 And I -- we also turned over the -- a transcript of the
9 most recent hearing before Judge Schulman that addressed a
10 number of discovery issues, including custodians and data
11 searching.

12 I guess I should underscore that -- because I think
13 it's the star of the show today, we turned over the list of
14 15,700 positions, titles, jobs, the email accounts for which
15 have now been -- or in some cases have been for a long time
16 but are now on hold.

17 And, to give your Honor a sense of the scale of that
18 hold, I conservatively estimate, but I think it's a lot
19 more, it's at least 100 email files that are now on hold.

20 THE COURT: Okay. So, I was -- read in your
21 papers that -- that there was a -- a deposition transcript
22 from the Uber's person most knowledgeable, and then there
23 was -- it also seemed like Uber was willing to turn over the
24 communications platforms used by Uber, the electronic
25 platforms, programs, databases, information, technology,

1 systems that Uber uses, and has historically used.

2 So, is that infor -- is that information that's just
3 kind of in the transcript, so, if somebody goes through and
4 reads the transcript or is it sort of separately listed out
5 and you've disclosed that to the JCCP and now the Plaintiffs
6 here and the MDL have it as well?

7 MR. ATKINS: It's -- it's both, your Honor. It's
8 in written communications with Plaintiffs' counsel and the
9 JCCP. And, of course, it's in the deposition at some length
10 and depth.

11 THE COURT: Okay. Well, why don't I turn to Ms.
12 Luhana then to -- it seems I got the sense from her that she
13 doesn't think that it's enough information at this point,
14 and it did to me overall seem like the heart of the dispute
15 is the extent to which Defendants are obligated to disclose
16 the noncustodial sources of potentially relevant ESI.

17 MS. LUHANA: Thank you, Judge. Actually, it's --
18 it's two-fold. The first request we have is that Uber
19 produce the names and job titles --

20 THE COURT: Right.

21 MS. LUHANA: -- the corresponding names and job
22 titles of everyone that's placed on hold. Importantly, we
23 want to know the dates of the employment of the custodians,
24 when each individual received the litigation hold, the date
25 range of the ESI that was preserved, and what litigation it

1 relates to. So, that -- that's our first request.

2 And then the second request is going into the
3 noncustodial sources, because if you reviewed this
4 Defendant's opposition, Uber believes that when litigation
5 holds are in place, they're complying with their PTO2
6 duties. However, there are a number of unanswered questions
7 as to the noncustodial sources, including structured and
8 unstructured databases, common places where they store
9 information regarding marketing and safety, human resources
10 and training resources and things like that. There is no
11 mention of that in their opposition papers. So, the --
12 those are two buckets of things that we're looking for.

13 And then, lastly, we ask that Uber suspend its auto
14 deletion policy just temporarily until we get to the bottom
15 of this and, you know, Uber provides the assurances that the
16 information, the relevant ESI that needs to be placed on
17 hold is, in fact, placed on hold.

18 And would you indulge me to go into the history of this
19 matter and how this arose and why there is a concern here?

20 THE COURT: Sure.

21 MS. LUHANA: Okay. So, let me briefly run through
22 the background here. So, it's established that the duty to
23 preserve arises not only during litigation but also extends
24 to the period before litigation, when a party should
25 reasonably know that evidence may be relevant to anticipated

1 litigation.

2 So, the allegations in this case are very serious.

3 We've alleged that Plaintiffs have been sexually assaulted
4 by Uber drivers, and Uber has failed to put adequate safety
5 measures in place to protect its passengers.

6 So, at the November 3rd hearing, before the hearing,
7 Judge Breyer recognized the critical issues in the case. He
8 said what Uber knew about these incidents of sexual assault,
9 when Uber knew, what actions Uber took, what were Uber's
10 hiring practices and monitoring practices for drivers, and
11 how Uber vetted its drivers was critical. He recognized the
12 scope of the allegations and what was involved.

13 However, before the parties appeared before the Court
14 on November 3rd, Uber in its submission to the Court, on
15 October 27th, had represented that it issued litigation
16 holds for multiple custodians who work on sexual assault
17 incidents.

18 So, clearly, the scope goes beyond those who just work
19 on sexual assault incidents. And, so, Uber's hiring
20 practices, its marketing practices, its safety protocols or
21 lack thereof historically are relevant. And, so, Uber's
22 obligation to preserve goes back to when Uber first knew
23 about these allegations, which we believe is no later than
24 2013.

25 In fact, Mr. Atkins had confirmed and represented that

1 to the Court, that these claims go back to 2013 on November
2 3rd.

3 So, even though passenger sexual assault litigation
4 began no later than 2013, Uber from September 2015 to
5 January 2023 was deleting emails every six months. And then
6 in 2020, Uber deleted all Slack messages over 90 days old.
7 So now, as of January 2023, Uber has a 24-month email
8 retention policy. And per Mr. Anderson's declaration, he's
9 Uber's senior e-discovery analyst. Google Drive documents
10 are currently -- currently just not automatically deleted.
11 But if Uber only had litigation holds on those multiple
12 custodians who work on sexual assault as Uber represented
13 and not, let's say, the company managers, the executives,
14 the engineers who were in charge of safety policies for
15 vetting drivers, then marketing, and Uber was deleting
16 emails every six months and all Slacks older than 90 days,
17 then there's a serious concern that the relevant ESI is
18 being destroyed if Uber didn't place timely litigation holds
19 on relevant custodians when Uber reasonably became aware of
20 the sexual assault allegations in 2013.

21 So, as a result of these concerning red flags, Judge
22 Breyer entered PTO2 as an interim measure which, among other
23 things, ordered that no party shall destroy any information
24 subject to discovery within their control without applying
25 to the Court.

1 So, therefore, Plaintiffs were really surprised when we
2 met with Uber on November 17th to discuss PTO2. The
3 Defendants provided conflicting information. We were told
4 Uber had not suspended its automatic deletion policy.
5 Plaintiffs were told that Uber at that time had a six-month
6 retention email policy and that Uber was having -- went from
7 having multiple custodians on hold to thousands of
8 litigation holds for undisclosed matters that may overlap
9 with this litigation.

10 So, Defendants can certainly inform Plaintiffs that
11 Uber had not suspended its auto deletion policy despite PTO2
12 and hadn't sought relief from the Court to do so.

13 And then, on December 1st, Uber clarified a couple of
14 things. They clarified their email retention policy that
15 they said was previously six months, was that -- was the
16 case in the past and that January 2023 there was a two-year
17 retention policy.

18 However, while Judge Breyer entered, you know, PTO2 on
19 November 3rd, on December 1st, almost one month later, Uber
20 represented that it still was unable to identify the number
21 of litigation holds for this litigation, and that's Uber --
22 that's Uber not -- that's despite Uber not having the
23 certainty that it still had not suspended its auto deletion
24 policy.

25 Then on December 13th, Plaintiffs for the first time

1 learned that thousands of employees had been placed on hold
2 in connection finally with this litigation. So, it wasn't
3 until Defendants filed their opposition, Judge, in this case
4 that Uber disclosed and Plaintiffs learned about the actual
5 number of litigation holds for this matter and other
6 matters.

7 So, because of this conflicting information that we've
8 received from Uber and the concern that relevant ESI is
9 still being destroyed, Plaintiffs have brought this motion.
10 And, so, we are requesting those three things I raised
11 previously. We're requesting that Uber produce to
12 Plaintiffs the basic details surrounding its litigation
13 holds and ESI sources to confirm what is being preserved for
14 PTO2, and require Uber to temporarily suspend its deletion
15 policies until the parties can come up with a more tailored
16 approach.

17 And, Judge, in terms of the details around the
18 litigation hold, that's something that's routinely provided
19 in litigation, and we cited to case law showing that. You
20 know, the ESI guidelines confirmed that as well as the
21 Advisory Committee notes to Rule 26. So, this is something
22 that's commonplace in litigation. And, because of all these
23 concerns, it's appropriate to produce here.

24 And, so, for these reasons, we believe Plaintiffs'
25 motion should be granted.

1 THE COURT: Okay. Thank you.

2 I think that we'll get to this question of suspending
3 company-wide document retention policies, but I think what
4 stood out to me most in the papers was the delay in
5 disclosing basic information about potential sources of
6 relevant ESI. And, to me, it seemed, you in reading the
7 case law, it -- or even the Sedona principles, pretty
8 straightforward, that while a litigant's not entitled to a
9 copy of the -- of the litigation hold letters or the
10 preservation letters, the litigants are entitled to have
11 some basic information about what is -- what's been
12 preserved.

13 And, so, I mean, there's Judge SEEBORG's decision in
14 the eBay case. There's the -- the Cohn v. Trump decision.
15 It's really kind of not -- not controversial. And then even
16 the Sedona principles, I think it's comment 5(c) that talks
17 about the parties should discuss custodial and noncustodial
18 sources of relevant or potentially relevant ESI.

19 So, and I think, you know, to the -- Judge Breyer's
20 pretrial order number two, I mean, while it's interim with
21 respect to -- to preservation, it expressly directed the
22 parties to -- to consider whether or not there -- they'd
23 like to make some kind of proposal for a more tailored order
24 concerning preservation of -- of relevant information.

25 And, so, because that order, you know, was issued with

1 an expectation that there might need to be a more tailored
2 preservation order, I think implicit in that is that there
3 is going to be disclosure of this basic information so that
4 if the scope of preservation needed to be adjusted or
5 somehow clarified by the Court, that could be done, but that
6 process to me seems like it was handicapped by the -- the
7 withholding of basic information. Granted, I recognize that
8 Defendant said, Well, you know, we want to -- we'll disclose
9 some of this after the protective order was finalized. You
10 know, Judge Breyer's pretrial order number two issued in
11 November -- on November 3rd, the protective order was
12 proposed by Plaintiffs on November 15th. I know we had a
13 Thanksgiving holiday. It then -- the feedback wasn't sent
14 along before that Thanksgiving holiday, and then it came
15 back sometime maybe in the second week of December. So --
16 so, anyhow, all of this seems to me rather delayed. I
17 didn't quite understand why some of this basic information
18 would -- what the connection was between the protective
19 order and some of this basic information about potential
20 sources of -- of relevant ESI. I mean, job titles, like,
21 that's the kind of information you see on LinkedIn. But
22 perhaps Mr. Atkins can elaborate on that. I mean, it's kind
23 of a moot point at this point because there is a protective
24 order, but to the extent we're talking about, you know, to
25 what extent this process is going as quickly as I think

1 Judge Breyer was contemplating, you know, why -- what is --
2 is there some connection between the protective order and --
3 and certain of this basic information that needed to be
4 turned over.

5 MR. ATKINS: So, your Honor, let me address a
6 number of those things. The connection with the protective
7 order is that because we interpreted Judge Breyer's office
8 -- order as being rather capacious, we put together this --
9 we put in a hold and then put together a list of all the
10 relevant job titles for 15,000 positions. And we -- we can
11 litigate the question of whether it should remain under
12 seal, but we had concerns about confidentiality.

13 But I think the point to understand here is this is
14 where we now are. We have put in place what in my
15 experience is an unprecedented preservation hold. It's not
16 just the scale, the 15,000 and the 100 million documents.
17 It's who's covered.

18 So, the Judge's order said define it broadly. It
19 should be executives and managers and directors, and it
20 should cover, you know, not just sexual assaults but safety,
21 technology, marketing. And we heard that, and we heeded
22 that. And if you'll just indulge me to give you a sense of
23 what we have preserved, which is the issue before us, that
24 list includes all the chiefs, CEO, CFO, Chief Safety
25 Officer, Chief Product Officer, Chief Technology Officer,

1 Chief Marketing Officer, all the topics Judge Breyer
2 identified and, frankly, more. I mean, and Chief Economist,
3 the general counsels. Then it's everybody else in the
4 corporate ladder, vice presidents, directors, managers,
5 heads, leaders, engineers, including but not limited to
6 safety marketing, safety legal, safety products. And -- for
7 example, there are literally hundreds of app developers,
8 coders, software engineers. There's 200 people involved in
9 investigations, including claims like these. There's --
10 there's nearly 200 lawyers.

11 We -- we just -- we threw as wide a net as we could
12 imagine. And, for what it's worth, I've been doing this for
13 a couple of years. I've never seen anything like it, but we
14 saw Judge Breyer. We understood him to want on this interim
15 basis to lock down anything that could be conceivably
16 relevant, and we've done that and I think more, number one.

17 Number two, there's no relevant evidence being
18 destroyed, full stop. There is a hold on thousands and
19 thousands and thousands of employees. And, importantly,
20 that goes back to the 2013 era. There have been holds in
21 place, many of them associated with individualized claims
22 like this. So, it's not as if the hold went into place last
23 week or even with the JCCP. So, it's thousands and
24 thousands of files with thousands and thousands of employees
25 going back a decade. And an indication of that, your Honor,

1 is that roughly two-thirds of the employees and executives
2 covered by this whole, two-thirds of them are former
3 employees. So, this is vast. It's deep. It's old. And in
4 terms of what's happening today, the 20-month hold sort of
5 rather -- sort of renders this academic because anything
6 that was created from January 23, 2023 forward, including
7 today, is going to be held for -- for two years, everybody's
8 in the company, people who work for Uber Eats, people who
9 work for the freight business. Everything's going to be
10 held.

11 So, at the earliest, an email that was created in let's
12 say January 2023 is not going to be deleted under the auto
13 deletion policy until January of 2025. And if a document is
14 created today, it's not going to be deleted until January
15 2026, and that's separate and apart from the 15,000 that are
16 on hold and are not going anywhere.

17 So, there's no urgency. There's been -- there's no
18 risk. And the time that it took to get this up and running
19 has had zero consequence in terms of the preservation of the
20 information.

21 Now, in terms of the nature of the information, we did
22 what we view as being proscribed by the practices and
23 standards. The Northern California checklist which the
24 Plaintiffs invoked says that you should disclose general job
25 descriptions and it should say it -- and an example it

1 gives, it has a paren with e.g., is managers, heads,
2 leaders. It's exactly what we do. So, we complied in full
3 with the Judge's order where our conduct is consistent with
4 the -- the governing standards and practice. And,
5 conversely, I think it's wholly unprecedented. I've seen no
6 precedent authority, much less case law from the Plaintiffs,
7 for suspending the entire retention and deletion policy.
8 There's no factual findings or evidentiary support that
9 there's any risk that warrant such an extreme result. And
10 there's a good reason here why it's 15,000, which is way
11 beyond what's relevant, because maybe, contrary to
12 perception, Uber does a lot more than ride sharing. It's
13 got the delivery business. It's got a freight business. In
14 fact, more than 50 percent of its revenue comes from
15 businesses other than ride sharing.

16 So, there's -- there's just absolutely no
17 justification, no legal precedent for putting a hold on, you
18 know, the folks in Uber Eats, although our net caught some
19 of them. So, again, we were over over over broad. So --

20 THE COURT: Well --

21 MR. ATKINS: -- that's where we are today.

22 THE COURT: Yeah. I'm not inclined to grant a
23 company-wide suspension of the -- any -- the document
24 retention policies, but I did wonder, you know, why are the
25 litigation holds placed on employees pursuant to litigation.

1 You know, other -- cases other than this litigation, why is
2 that relevant to demonstrate that Defendants have met their
3 preservation obligations for this case? I mean, you've got
4 5,500 current and former employees who have document holds
5 for this case, and then you say, Okay, well, there's 10200
6 of employees who happen to have litigation holds for some
7 other litigation. Why -- why does that bear the Court's
8 consideration? I mean, it does show sort of an overall the
9 extent to which Uber, you know, has this burden I guess, but
10 those are burdens kind of associated with -- with other
11 cases.

12 So, I mean, we -- we don't know the time --

13 MR. ATKINS: I can ans --

14 THE COURT: -- time frame --

15 MR. ATKINS: I can --

16 THE COURT: -- of when these other litigation
17 holds were put in place. You know, that -- and I think
18 you're talking about numbers of people who have litigation
19 holds for their facility workers but not -- we don't --
20 there's not a lot of detail for Plaintiffs to evaluate when
21 were those litigation holds in place. And, you know, you
22 look at a case like Cohen v. Trump, and there's like the
23 name and titles of the person, the dates when -- when they
24 got notification of the litigation hold, the types of
25 documents and files that are subject to the litigation holds

1 and the efforts undertaken to enforce it.

2 I mean, so, anyhow, what -- I'm getting a little bit
3 off what my question was, but 10,200, why is that important
4 here?

5 MR. ATKINS: A couple of reasons. First of all,
6 it captures people -- mostly former, not entirely -- who may
7 have relevant information. It -- it does cover them. We --
8 rather than going through every single existing hold, we
9 just said hold the holds, but many of those people -- I
10 can't quantify that. We'll do that when we pick custodians
11 and start running search terms, but the last thing we wanted
12 was to be here today and accused of having lifted other
13 holds. But those other holds may well include folks who
14 have or had relevant information. So, that's why.

15 Also, I thought it was important for the Court to
16 understand how seriously we take this, and we didn't want to
17 be said to have lifted any holds, deleted any documents that
18 were already held. But there will be documents, I suspect,
19 among those 10,200 that are relevant.

20 THE COURT: Okay.

21 MR. ATKINS: And, so -- and, again, we're -- you
22 know, my view is, your Honor, we're here on preservation.
23 So, we locked everything down.

24 And now, to your -- your Honor's questions about
25 additional information. With all respect, that's what

1 becomes next.

2 THE COURT: Yeah. What's the basis for
3 withholding basic information about noncustodial sources of
4 ESI?

5 MR. ATKINS: I'm going to let Mr. Smith address
6 that if you'll permit me to step aside.

7 MR. SMITH (via Zoom): Thank you, your Honor.

8 THE CLERK: Sir, can you please state your
9 appearance for the record?

10 MR. SMITH: Yes. Kyle Smith for the Uber
11 Defendants.

12 Thank you, your Honor. So, that information is not
13 being withheld. What the -- what the noncustodial sources
14 are, what databases exist, how the data structure, where
15 it's stored, what the policies around the storage of that
16 information are, that is information that is proprietary
17 and, thus, therefore, confidential to Uber. And that's what
18 we were waiting for the December 28th protective order
19 before making the disclosure, and that is the information
20 that went out today to Plaintiffs in the form of deposition
21 transcript, in the form of exhibits to the deposition
22 transcript in terms of correspondence that had been sent to
23 counsel in the JCCP saying, Hey, here is source one, source
24 two, source three of noncustodial information that you may
25 have questions about and disclosures about that. So, that

1 -- the answer -- that's a long-winded answer to your Honor's
2 question of it's not being withheld. That's being provided.
3 There are follow-up questions. They will be answered now
4 that we have the protective order in place and are able to
5 make the appropriate disclosures under the protections of
6 the order.

7 (Pause.)

8 THE COURT: Well, I mean, I guess it's kind of
9 tricky for me to issue an order in some ways because I don't
10 know exactly what's been disclosed and what's still at issue
11 at this point. And, you know, Plaintiffs haven't had an
12 opportunity to go through those most recent disclosures and,
13 you know, clarify for the Court what's still at issue.

14 MS. LUHANA: Judge, can I say a few things --

15 THE COURT: Yes.

16 MS. LUHANA: -- in response? In terms of what
17 Uber recently produced last week, it was 296 pages of just
18 job titles. And, as you importantly pointed out, case law
19 supports producing names, corresponding titles, the ESI
20 that's preserved when the notices go out, all that
21 information in addition to just the titles.

22 In addition to that, the ESI checklist, one facet of it
23 it mentions is job titles, but it goes beyond that. So, we
24 request that Uber produce that.

25 In terms of the noncustodial sources and information

1 that was produced just hours before today, critically the
2 questions are what was preserved and when it was preserved,
3 in addition to the different types of noncustodial sources
4 and, historically, what the sources were used from, from at
5 least 2013 beyond.

6 And, so, I don't know if we're going to get answers to
7 those questions. And, so, we request that you provide that
8 relief so we don't have to go rifling through the deposition
9 transcript. These are answers that Uber should be able to
10 provide to us in a declaration or some other form.

11 THE COURT: Okay. All right. Well, I've got a
12 couple of questions for you about, you know, this company-
13 wide suspension of --

14 MR. ATKINS: Sure.

15 THE COURT: -- document retention policies. I
16 mean, why -- why does this make sense? I know earlier you
17 were talking about given the sort of history of this
18 litigation and the history of sexual assault allegations as
19 to Uber drivers, that they should have been on notice a long
20 time ago and there are different document retention policies
21 over the course of the -- of the company's history for
22 different types of data. But, you know, your brief
23 characterizes it as essentially like it's plausible that --
24 that relevant ESI is being destroyed. And this is a big
25 ask. It wasn't clear to me, you know, like what's -- what's

1 the best case legal authority for issuing such sweeping
2 relief. I mean, is it even feasible just thinking about it
3 from a practical operational standpoint? The company would
4 not be able to throw out any single piece -- record, piece
5 of electronic information?

6 MS. LUHANA: So, Judge, our thinking in terms of
7 what Defendants had raised in their papers, we believe it's
8 a straw man. PTO2 was an interim order, and it was raised
9 in the context of some red flags that were raised, some
10 conflicting information that we were provided and, lastly,
11 some unanswered questions that we still have today.

12 So, the goal here is to sort through this --
13 Defendants produced the information that we have requested
14 -- appropriately, meet and confer, and then, you know, until
15 that point, just suspend the deletion process, which would
16 be temporary and very minimal, a 30-day period to just
17 suspend that deletion policy. Until we get to the bottom of
18 this and they produce this information, we meet and confer,
19 and we ensure that that relevant ESI is being preserved.

20 And, so, what we were looking to is PTO2, which
21 Judge Breyer implemented as an interim measure and
22 specifically ordered and said to the parties, I understand
23 this is broad. You are going to need relief, but you must
24 apply to it. And Uber never had applied for it and
25 continued with their auto deletion policy despite being able

1 to tell us at that time what litigation holds it had even in
2 this litigation, which was of concern to us.

3 So, all we're asking for is a small window of time to
4 allow Uber to produce the requested information, us meet and
5 confer with them and then come up with a tailored response
6 to -- to narrow PTO2.

7 THE COURT: Do you have -- like, what's the best
8 example of a court doing -- issuing that kind of relief?

9 MS. LUHANA: I mean, I believe in --

10 THE COURT: Can you come up with any particular
11 circumstances?

12 MS. LUHANA: -- Apple v. Samsung.

13 THE COURT: Yeah.

14 MS. LUHANA: It told, you know, the parties to
15 suspend the deletion process, but, of course, it was for the
16 information that was relevant to the litigation, and that's
17 what we're looking for here. And, so, the concern is if you
18 look at Uber -- Uber's opposition, it truly does miss the
19 mark. They put in a chart, right, in terms of PTO2 and how
20 they were accomplishing and meeting the requirements of
21 PTO2. And there are significant voids there because they
22 continue to say, Hey, we got the custodial holds. We have
23 the litigation holds, and that answers all our questions
24 when, in fact, if you go through each individual request
25 there, I mean, each individual part of PTO2, the custodial

1 holds don't answer a slew of other questions. And, so,
2 that's my -- that's our concern, that there is still
3 relevant ESI being deleted because there are sources that
4 are still not being preserved today.

5 THE COURT: Well, in the background, you also have
6 the JCCP and, you know, presumably, there's all sorts of
7 litigation holds. That case has been going on for a while.
8 I mean, that seems to me to reduce the risk that there's any
9 relevant information that's being destroyed.

10 MS. LUHANA: Right.

11 THE COURT: Or, if it was destroyed, it was
12 destroyed a long time ago and nothing --

13 MS. LUHANA: Right. My concern is -- my --

14 THE COURT: -- at this point that the Court can --

15 MS. LUHANA: My concern is --

16 THE COURT: -- do would --

17 MS. LUHANA: I apologize.

18 THE COURT: -- [Zoom glitch] that. That seems to
19 be like potentially what you're going to discover if you get
20 more --

21 MS. LUHANA: My -- that's why the --

22 THE COURT: -- retention policies and the dates
23 and to whom they applied and so forth.

24 MS. LUHANA: To dig into if the relevant ESI has
25 been preserved and for whom and when those litigation

1 notices were sent and what exactly was preserved is
2 critical. But if those documents and custodians, if the
3 holds were put in place, I truly don't understand why Uber
4 represented to this Court on October 27th that only multiple
5 custodial holds were in place. If there were thousands of
6 holds at that time, why was that not -- that not raised with
7 the Court.

8 And, in addition to that, you know, a six-month
9 deletion policy starting in 2015 to January 2023 is very
10 alarming. It's a very short policy to delete emails. And,
11 so, you know, Mr. Atkins said to us right now that January
12 2023 to 2025 you'll have that. But what about all the
13 documents pre-2023? And that's why the -- to get to the
14 bottom of this, it's critical that Uber produced this
15 information that we're requesting.

16 THE COURT: Mr. Smith, do you want to respond to
17 what Ms. Luhan was saying?

18 MR. SMITH: I would like to, your Honor. Thank
19 you.

20 So, as to the authority that supports entering an order
21 suspending the deletion policy, we think the answer is there
22 is no such authority. The Apple v. Samsung case involved a
23 case where after, at the end of the discovery process, there
24 was a showing, evidentiary showing of deficiencies, of gaps
25 in what had been done. And at the end of that process,

1 there was a consideration whether some other sanctions,
2 remedies, or some things needed to be entered, and it was
3 not suspending all of Samsung's company-wide deletion -- so-
4 called deletion policy in any event, but it wall after there
5 was a showing.

6 Here, we don't think any such showing is going to be
7 made because of the extraordinary efforts that have been
8 taken. And Ms. Luhana circled back to, Well, this is why we
9 need the disclosure of information. That disclosure is
10 underway. If the -- if the dispute here is, Well, you what,
11 the 26(f) checklist calls for names and/or job titles.
12 They've only got job titles, frankly, that seems to us to be
13 the most pertinent piece of figuring out is everything going
14 okay. But if there's a need for some names to go with some
15 of the job titles, we're happy to confer with Ms. Luhana,
16 Ms. Abrams, Ms. London, find out which job titles they want
17 to know the names for, and talk about them now that we have
18 the protective order.

19 In terms of authority for ordering more than that, such
20 as identifying what matter -- what the underlying litigation
21 matters where -- in which a hold was placed or the precise
22 dates on which a hold was placed, we don't think that any of
23 the authority the Plaintiffs have cited supports ordering
24 such a production before there is some showing of a gap in
25 what's being produced in litigation. There is no showing

1 right now. We don't think there will be such a showing.
2 But if there is some issue in the future where there's some
3 gap, that's where the question of what -- who -- well, when
4 did that hold go in place might be relevant. But it's not
5 something that's needed as to the 15,700 people that are on
6 hold at the company. It's not something that's needed or
7 warranted as to the 5,000-some-odd people that are on hold
8 even in this matter. That -- who those people are is what's
9 needed. They have that. If there's a question about the
10 names of some of those folks, we're happy to work with them
11 on that.

12 THE COURT: Okay. I mean, I'll give some more
13 thought to Plaintiff's request to suspend the company-wide
14 document retention policies, but it does feel a bit
15 premature to me. What -- what I am considering more
16 strongly is -- is putting you all on a very tight schedule
17 to get this in for me, for Defendants to get this basic
18 information about the ESI sources over to Plaintiff right
19 away. And, I mean, some of that has come in of late, but
20 just to ensure that all of the information that I think that
21 they're entitled to is turned over, I could still issue an
22 order that says this is the information that has to be
23 turned over. To the extent that it's been around for a long
24 time and the timing of it was tethered to a protective
25 order, to Rule 26(f) disclosures, which I didn't quite

1 understand that argument because Judge Breyer's order from
2 December 6 set case management deadlines that essentially
3 called for the Rule 26 conference, 26(f) conference. So,
4 anyhow, seems like -- well, I won't -- I won't go back into
5 that background, but what I'm thinking is 24 hour -- 20 --
6 48 hours to disclose some of the most basic information,
7 seven days to -- for Defendants to produce information about
8 the custodial and noncustodial ESI sources, you know, what
9 the sources -- each source that was -- identifying each
10 source, whether each source is preserved, when -- you know,
11 how that -- that -- that source was used by Uber, what
12 each source was used for. I mean, this is information that,
13 well, you could get in a deposition transcript, but I don't
14 see why it can't also be listed out in a declaration. I
15 think those are -- it's really about the substance, and, you
16 know, Plaintiffs can ask for it in a deposition or they can
17 ask for it in a declaration. It doesn't -- at the end of
18 the day, I think they -- it seems like a litigant has a
19 prerogative to decide what form they want the information to
20 be presented in, provided it's not burdensome. So -- unduly
21 burdensome.

22 So, anyhow, that's -- that's kind of what I've been
23 thinking is no suspension of the company-wide document
24 retention. We'll put you guys on the short schedule so that
25 you can proceed to actually meaningfully meeting and

1 conferring and figuring out whether you need a more tailored
2 preservation order from the Court. And you can dig into
3 what this 15,000 plus group of employees, current and
4 former, how -- how meaningful that is as far as they're
5 being custodians. I mean, maybe it's not necessary, but the
6 Plaintiffs and the Court can't evaluate that if we don't
7 know who they are, what their job titles are, what the sort
8 of time frame is for their records and so forth.

9 So -- so, just so you're aware of what direction I
10 think I'm going in, but I -- I will give more thought to all
11 of the arguments that were made today. And, Mr. Smith, if
12 you want to, you know, add anything in the last couple of
13 minutes, you can react to what I just laid out.

14 MR. SMITH: Thank you, your Honor. We -- what we
15 would like to do if it meets with your Honor's approval, it
16 is true -- Ms. Luhana has said a lot of the information was
17 produced very recently, including this morning. That is
18 absolutely true. It took us a little time to get it
19 packaged up on the entry of the protective order.
20 Plaintiffs have not had time with it. The Court does not
21 have the benefit of that information.

22 We would propose to submit to the Court a status report
23 that describes what was produced since the December 22nd
24 opposition up until the time of this hearing, and we think
25 it's, frankly, virtually everything your Honor just

1 identified contemplating going into an order, and we'd like
2 to be able to identify that for your Honor and submit in
3 camera under seal the actual underlying materials and have
4 that serve as identifying whether any further next steps are
5 needed.

6 THE COURT: That seems like it might just create
7 some delay to me because --

8 MS. LUHANA: Yes.

9 THE COURT: -- then I have to look through your
10 filing, but, I mean --

11 MS. LUHANA: Judge --

12 THE COURT: -- I've read the basis, and I've read
13 the briefings.

14 MR. SMITH: I mean, I -- and I --

15 THE COURT: You could see what my order says, go
16 and look at what you've turned over already, and maybe you
17 -- you can check most of it's taken care of.

18 MS. LUHANA: Yes, Judge, the concern is delay
19 here. And, you know, Mr. Smith raised that there has to be
20 some sort of showing of wrongdoing to get this information
21 around the litigation hold, and that certainly just isn't
22 the case. The ESI checklist makes recommendations of the
23 type of information that needs to be produced. And, so,
24 we'd request that the Defendants produce those names and job
25 titles and the types of documents and files that are on

1 litigation hold and when these holds were sent out.

2 And, so, there is a concern there's already been
3 significant delay. We've rescheduled this hearing twice
4 already. And, so, the litigation --

5 THE COURT: Well, you all wanted it on January
6 19th and --

7 MS. LUHANA: No, no, no --

8 THE COURT: -- I wanted to do it before Christmas.
9 So --

10 MS. LUHANA: No, no. My point is is, of course --
11 no, no. I -- my -- I was raising that because there --
12 there is going to be a continued delay if we do what Mr.
13 Smith has suggested. It makes sense to take direction from
14 your order and then proceed with a meet and confer, Judge.

15 MR. ATKINS: May I make one final response, your
16 Honor?

17 THE COURT: Um-hmm.

18 MR. ATKINS: As to the question of are the
19 Plaintiffs entitled to know the details of what matters and
20 which litigation hold was entered, what the precise date of
21 that was, we don't think the case law supports that. The
22 issue of names and job titles, we acknowledge that is
23 contemplated by the cases and the 26(f) checklist, and that
24 won't be any issue. But, as to the details and surrounding
25 when holds were issued, and, in particular, what matters

1 they were issued in, that does go beyond what the case law
2 requires in the absence of a showing of some wrongdoing,
3 which has not been made here.

4 THE COURT: Well, I -- I think this is kind of an
5 unusual case. I mean, it's an MDL. It's -- it involves
6 individual cases that were filed going back to 2013. I
7 mean, the typical case that -- that I've read about, it
8 doesn't involve like 15,000 litigation holds, 10,000 plus of
9 which relate to some other litigation. So, it's just kind
10 of an unusual footing. It seems to me like it's maybe
11 information that's not needed and that it would take a long
12 time to maybe suss out each of those details. And the point
13 is that it seems like the most important information is when
14 the information was preserved, the date period for when it
15 was preserved, what the -- what information, what type of
16 data was preserved.

17 As far as to what litigation it ties to, I mean, I'll
18 let Ms. Luhana -- like, why is that necessary? Like, why
19 should I put Defendants through, you know, the time and
20 effort and the labor that's required to gather that
21 information and add it into the column?

22 MS. LUHANA: Judge, we're not concerned about the
23 specifics of other litigation. It could just be sexual
24 assault litigation and other. That's all that has to be
25 provided if -- if they want to note it. We just want to

1 ensure, as you had appropriately stated earlier on, that
2 we're concerned about the litigation holds for this case,
3 the sexual assault litigation against Uber. And, so, that
4 is truly the focus. And, so, for the other litigations,
5 they can just note other, and that would be fine to us as
6 well.

7 MR. ATKINS: May I respond, your Honor?

8 THE COURT: Sure.

9 MR. ATKINS: Undertaking -- as your Honor
10 identified, undertaking the effort to sort out for 15,000
11 people would be a massive undertaking, one that may incur
12 some delay. We don't think it -- it's needed. And I want
13 to address one question your Honor raised, which is why do
14 the 10,000 people matter? Why does Uber get credit for
15 that? Well, that's explained in paragraph eight of Mr.
16 Anderson's declaration that was submitted with our papers.
17 I'm going to read it, if I may. It's one sentence.

18 "When a current or former
19 employee's account is placed on a legal
20 hold, the individual's electronic
21 materials are preserved regardless of
22 the subject matter of the litigation."

23 So, why do those 10,000 matter? Well, they matter
24 because their documents are being held just like the
25 documents for the some 5500 who've received a hold in

1 connection with these litigations. So, Uber is meeting its
2 obligations in this case by sending out holds to 5500
3 people. But, on top of that, there are some 10,000 others
4 whose documents are being held in exactly the same way, and
5 Uber's duty was to meet its obligations to identify the
6 people that are on hold, some after the job titles, and if
7 there's a need for the -- for the names for the people for
8 this litigation or for all 15,000, that can be done. But
9 beyond that, it's not something that's necessary to drill
10 down on who are the 100 or 50 people that are going to be
11 custodians in this case.

12 THE COURT: Well, I -- I mean, yeah, their --
13 their information is preserved. It's not discarded. But,
14 you know, what if that person's got a litigation hold due to
15 a slip and fall case in the lobby of the Uber building or a
16 breach of contract case? Like, why -- what's the likelihood
17 that they're going to have information that's relevant to
18 this case?

19 So, it sort of creates a sort of image like a lot of
20 information that's potentially relevant for the claims in
21 this case have been saved and, you know, Uber's therefore
22 doing a good job, but should the Court really take that --
23 weigh that heavily because, you know, this -- these holds
24 might be related to cases that have like absolutely nothing
25 to do with this particular MDL.

1 So, but maybe -- maybe a lot of it does. So, just
2 there is very little information at this point to know one
3 way or another. I mean, we should credit it if it's -- if
4 it's likely to be relevant, but -- but I think it's --
5 anyways, I think I've heard enough for -- for today.
6 Everybody has been very helpful in terms of filings and --
7 and the argument today. So, I appreciate your time, and it
8 was tricky to schedule this. It was unfortunate that Mr.
9 Atkins got so sick, but, you know, he's improving, and
10 that's a good thing, and we -- we did finally have this
11 hearing.

12 So, I will do my best to issue this order as quickly as
13 possible given the timing on all of this, but -- I can't
14 make a specific commitment, but it should be quick.

15 MR. ATKINS: Thank you, your Honor. And we do
16 sincerely appreciate your Honor's and Plaintiff's counsel's
17 accommodations and respect of Mr. Atkins' illness. They
18 were extremely cordial and courteous with that, and we do
19 appreciate that and the Court's indulgence on that as well.

20 MS. LUHANA: Thank you, Judge, so much for your
21 time.

22 THE COURT: Okay. Thank you. Take care.

23 (Proceedings adjourned at 1:25 p.m.)

24

25

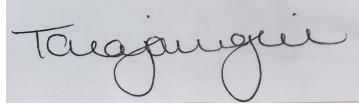
1 CERTIFICATE OF TRANSCRIBER

2

3 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14

15 

16

17 Echo Reporting, Inc., Transcriber

18 Thursday, January 11, 2024

19

20

21

22

23

24

25